

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

JOANNE M. HOWARD,

Plaintiff,

09-CV-0295S(Sr)

v.

**STATE UNIVERSITY OF NEW YORK
ERIE COMMUNITY COLLEGE, et al.,**

Defendants.

DECISION AND ORDER

This matter was referred to the undersigned by the Hon. William M. Skretny, in accordance with 28 U.S.C. § 636(b), for all pretrial matters, including hearing and disposition of all non-dispositive motions. Dkt. #27.

Currently before the Court is the motion of defendants, Erie Community College, Eileen P. Flaherty, Richard Washousky, Kenneth J. Barnes, Sr., Michael Summers, Martha Dixon, Richard Kurek and Erie County, to compel the plaintiff to respond to defendants' discovery demands including, Defendants' First Set of Interrogatories, Document Demands and Notice to Take Deposition. Dkt. #40.

Plaintiff commenced this action, *pro se*, on March 31, 2009, alleging, *inter alia*, discrimination on the basis of race and gender and retaliation pursuant to Title VII of the Civil Rights Act of 1964. Dkt. #1. Shortly after commencing this action, *pro se*,

counsel appeared on behalf of plaintiff. Dkt. #3. Thereafter, an Amended Complaint was filed on April 20, 2009. Dkt. #6. Defendants each filed their Answer to the Amended Complaint on June 17, 2009 (Dkt. ##17-22) and pursuant to Federal Rule of Civil Procedure 26(f), the parties submitted a proposed Discovery Plan to the Court on August 25, 2009 (Dkt. #29). A Preliminary Pretrial Conference was held on September 10, 2009 and this Court issued its Case Management Order (Dkt. #31) on September 14, 2009. This Court's Case Management Order adopted the parties' proposed dates set forth in the Discovery Plan. Compare Dkt. ##29 and 31. On September 14, 2009, a Stipulation of Substitution of Counsel was filed reflecting new counsel on behalf of plaintiff. Dkt. #32.

Since this Court issued its initial Case Management Order on September 14, 2009, the Court has, on three separate occasions, issued Amended Case Management Orders. Dkt. ##35, 38 and 39. The most recent Amended Case Management Order was issued on May 31, 2011 and provided, *inter alia*, for the completion of discovery by July 25, 2011. See Dkt. #39. On June 24, 2011, defendants filed the instant motion to compel, seeking an order directing plaintiff to respond to defendants' discovery demands and for an order extending the discovery deadlines. Dkt. #40.

As detailed in the instant motion, on or about March 21, 2011, defendant Erie Community College served interrogatories, a request for the production of documents and a notice to take deposition. Dkt. #41, ¶ 4. As of the date of the filing of

the instant motion, June 24, 2011, defendants had not received a response from plaintiff to the interrogatories or demand for documents. *Id.* at ¶ 5. Plaintiff's deposition was originally scheduled for June 3, 2011, but thereafter was mutually rescheduled to June 17, 2011. *Id.* at ¶ 6. Later, plaintiff's counsel requested that plaintiff's deposition be rescheduled from June 17, 2011 and proposed the date of June 22, 2011. *Id.* Defendants' counsel responded by e-mail to plaintiff's counsel that June 22, 2011 was not convenient and offered the alternative dates of June 24 or 27, 2011. *Id.* Defendants' counsel never received a response to her June 8, 2011 e-mail. *Id.*

Because she received no response to the interrogatories, demand for documents and her June 8, 2011 e-mail, counsel for defendants had no alternative but to file the instant motion seeking an order compelling plaintiff to respond to the outstanding discovery demands and an extension of the existing Case Management Order deadlines. Dkt. #40. The instant motion was filed on June 24, 2011 and that same day, this Court issued a Text Order (Dkt. #42) directing that plaintiff's response to the motion was due by July 22, 2011 and that replies were due by August 5, 2011. To date, plaintiff has not responded to the instant motion.

Plaintiff is directed to file her response to the instant motion to compel no later than **September 8, 2011**. Failure to do so will result in a recommendation by this Court that her action be dismissed with prejudice for failure to prosecute pursuant to Fed. R. Civ. P. 41(b).

SO ORDERED.

DATED: Buffalo, New York
August 19, 2011

s/ H. Kenneth Schroeder, Jr.
H. KENNETH SCHROEDER, JR.
United States Magistrate Judge